

Adoption Level
May 5, 2004

TO: Members, State Board of Education

FROM: William L. Librera, Ed.D.
Commissioner

SUBJECT: N.J.A.C. 6A:26, Educational Facilities

REASON
FOR ACTION: Amendments to N.J.A.C. 6A:26, Educational Facilities

SUNSET DATE: October 1, 2006

Summary

The Department of Education is proposing recodification, amendments, and new rules to implement Sections 1 to 12, 57 and 58 of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72. These rules are proposed in order to ensure that the educational facilities in the State are safe, healthy and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the Core Curriculum Content Standards. These rules apply to all districts in the State. They govern all aspects of capital projects, from the planning process to submission of plans, financing and completion of capital projects, and set forth necessary procedures for compliance with EFCFA.

N.J.A.C. 6A:26 was originally adopted October 1, 2001. In the course of implementing EFCFA, the Department has identified a number of areas that warrant adjustment and change. The proposed changes affect almost every section of chapter 26, beginning with definitions, and continuing to long-range facilities plans, capital project review, management of capital projects, review of capital projects for educational adequacy, planning and construction standards, land, temporary school facilities, capital reserve accounts, lease purchase agreements, operation and maintenance of facilities, and withholding of state support for non-compliance. There are substantial changes in the following areas: the eligibility of rehabilitation work, equipment, and physical education fields for State share, the procedures for districts with failed referenda to appeal to the Commissioner for local share authorization, community provider projects, land acquisition (funding, a new Department of Environmental Protection review step, a reorganized Department review), temporary facilities (approval, funding, educational adequacy and standards), demonstration projects, treatment of insurance and other private sources of funds as relating to school facilities project funding, cost shifting within an approved referendum, options where there are insufficient

funds to complete a project, bidding and awarding of non-Authority projects, a new rule for capital projects not subject to educational adequacy, planning and construction standards (a variance process, several revised standards, a new rule for preschool planning standards), capital reserve accounts (increased flexibility to use capital reserve for pre-development or pre-application costs), and lease purchase (new ability to fund the local share of Authority projects). Upon adoption, the recodification, amendments, and new rules will sunset in October of 2006.

As the Department has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5. The following summarizes the content of each section to be recodified, amended, or proposed as a new rule:

CHAPTER 26. EDUCATIONAL FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

6A:26-1.2 Definitions

The Department is proposing to add a definition for “additional costs” to distinguish such costs from excess costs, which is intended to assist districts in seeking the authorization for local share.

The Department is proposing to clarify the definition of “area cost allowance” to link the area cost allowance to the year of approval of the school facilities project, which may differ from the more fluid period when an application is submitted, and to update the amount of the allowance.

The Department is proposing to amend the definition of “Authority” to reflect the creation of the New Jersey Schools Construction Corporation by the New Jersey Economic Development Authority.

The Department is proposing changes to the definition of “community provider early childhood education facilities project” for consistency with the proposed New Jersey Schools Construction Corporation Community Early Childhood Education Facilities rules at N.J.A.C.19:36.

The Department is proposing to update the definition of “Division.”

The Department is proposing to change the definition of “excess costs” to more clearly distinguish such costs from additional costs.

The Department is proposing a technical amendment to the definition of “excluded space.”

The Department is proposing to amend the definition of “facilities efficiency standards” to include early childhood schools. Executive Order No. 24 (2002) directed the Department to establish such standards.

The Department is proposing to amend the definition of “feasibility study” to clarify that such a study may consist of a pre-land acquisition evaluation and also for consistency with the pre-development rules of the New Jersey Schools Construction Corporation.

The Department is adding a definition of “NJDEP.”

The Department is proposing to amend the definition of “other allowable costs” to include permitting and plan review fees among the items eligible for State support.

The Department is proposing changes to the definition of “other capital projects” for consistency with the proposed treatment of leased facilities and temporary facilities and to avoid confusing emergency stabilization with a capital project.

The Department is proposing to amend the definition of “other facilities” to provide clarifying examples of the term.

The Department is adding a definition of “pre-development activities” for clarity and also for consistency with the definition in the pre-development rules promulgated by the New Jersey Schools Construction Corporation.

The Department is proposing to amend its definition of “redevelopment entity” to reflect that the redevelopment entity should be evaluated as a team with the redeveloper for purposes of demonstration project designation, and consistent with the pre-development rules promulgated by the New Jersey Schools Construction Corporation.

The Department is proposing changes to the definition of “school facilities” to exclude other central service facilities including kitchens and maintenance shops.

The Department proposes to amend the definition of “temporary facility” to clarify what types of facilities are considered temporary.

The Department is adding definitions of “Type I district” and “Type II district” to clarify the types of approvals needed for authorizing local share.

The Department is proposing to change the definition of “unhoused students” to clarify that districts need to take community provider capacity into consideration when calculating the number of unhoused students.

SUBCHAPTER 2. LONG-RANGE FACILITIES PLANS

6A:26-2.1 Responsibilities of district

The Department is proposing to clarify at N.J.A.C. 6A:26-2.1(a) and (b) that the long-range facilities plan (LRFP) shall be submitted to the Department. The Department is also proposing to revise N.J.A.C. 6A:26-2.1(g) to require more specific information regarding the number of early childhood students that need to be served by the ECPA district.

6A:26-2.2 Completion of long-range facilities plans

The Department is proposing to revise N.J.A.C. 6A:26-2.2(a) to require that the LRFP include specific information about students enrolled in various types of schools to accurately account for students served in the district and specific information regarding a district’s current land holdings and new sites that may be needed for school facilities projects in the future. This information will help improve land utilization in school districts. In addition, the Department is proposing to replace the term “system” with the term “building system” to clarify its meaning.

The Department is proposing to amend N.J.A.C. 6A:26-2.2(b)1 to clarify that districts need to include community provider facilities housing preschool students when calculating the number of unhoused students.

Proposed amendments to N.J.A.C. 6A:26-2.2(c) require that any planning board findings on the LRFP be forwarded specifically to the Division of Finance. In addition, any local planning board findings received by the district or the district architect shall be forwarded to the Division.

6A:26-2.3 **Review and approval of long-range facilities plans**

The Department is proposing to revise N.J.A.C. 6A:26-2.3(b) to include a listing of all district-owned land and a listing of any new school sites needed for school facilities projects in the final determination of the LRFP for improved utilization of district-owned land. In addition, the Department is proposing to clarify that the LRFP final determination will indicate spaces in excess of the facilities efficiency standards that may not be eligible for state support.

The Department is proposing to revise N.J.A.C. 6A:26-2.3(c) to require the request for an amendment to the LRFP to be accompanied by a district board of education resolution approving the submission of the amendment. The Department is also proposing to revise N.J.A.C. 6A:26-2.3(c)1 to require an amendment to the LRFP, even in the case of emergent projects for consistency with other project types and to keep the LRFP current. The Department is also proposing that school facilities projects submitted with programmatic models that deviate from the approved LRFP would require an amendment to the LRFP prior to approval of the project. Finally, the Department is proposing to create a process for districts interested in amending their LRFP without associated projects.

SUBCHAPTER 3. CAPITAL PROJECT REVIEW

6A:26-3.2 **School facilities projects**

The Department is proposing to amend N.J.A.C. 6A:26-3.2(a) to reflect that the Department has now developed and requires as a standard practice a project application form to be submitted by a district seeking to initiate a school facilities project.

The Department is proposing to amend N.J.A.C. 6A:26-3.2(a)2 to clarify that rehabilitation or capital maintenance projects generally shall consist of the entire building system in the same school facility building section, with certain exceptions, to facilitate good capital project planning by districts.

At N.J.A.C. 6A:26-3.2(a)4, the Department is proposing to delete a duplicative reference to school facilities project. At N.J.A.C. 6A:26-3.2(a)4i, the Department is proposing amendments to delete references to equipment, because equipment is addressed separately in a new N.J.A.C. 6A:26-3.2(a)4iii. Under proposed N.J.A.C. 6A:26-3.2(a)4iii, equipment eligible for State support has a useful life of 10 years or greater, and is either part of a school facilities project or a stand alone school facilities project but only if it is an integral and substantial part of a building system. This new provision also clarifies the types of district operating equipment, along with repairs to such items, which are ineligible for State support. Proposed N.J.A.C. 6A:26-3.2(a)iv establishes the circumstances under which air conditioning systems are eligible for State support. In order to assist districts in the funding of computers and other electronic equipment with a useful life of under 10 years, the Department also proposes a new provision, at N.J.A.C. 6A:26-3.2(a)v, to address the

eligibility of technology recommended by State education technology standards for State support, providing that such equipment is either part of a school facilities project consisting of new construction or rehabilitation qualifying as reconstruction (“gut rehab”) as defined by the Uniform Construction Code (“UCC”).

The Department proposes a new provision at N.J.A.C. 6A:26-3.2(a)5 to address the eligibility of multi-purpose physical education fields and playgrounds including playground equipment under certain circumstances, when required to support the Core Curriculum Content Standards.

Proposed amendments to N.J.A.C. 6A:26-3.2(b)1 adds application requirements addressing design work required for projects not subject to educational adequacy and land acquisition if applicable.

Proposed amendments to N.J.A.C. 6A:26-3.2(b)13 would clarify that the district board of education resolution would authorize the submission of the application to the Division.

At N.J.A.C. 6A:26-3.2(b)14, the Department is proposing to add a requirement that a school facilities project application include a certification from the chief school administrator and the school business administrator that the district has not advertised or awarded a contract for the project and has not completed the project to clarify that the after the fact approach to project determinations is not consistent with EFCFA.

N.J.A.C. 6A:26-3.2(b)15 is proposed for recodification with no change in text.

N.J.A.C. 6A:26-3.2(c) is proposed for amendment in order to clarify how the planning board review period differs depending on whether or not the district has a district aid percentage of under 55 percent, and therefore, whether the longer period addressed in N.J.S.A. 18A:18A-16 is applicable. In addition, proposed amendments to N.J.A.C. 6A:26-3.2(c) require that any planning board project findings be forwarded specifically to the Division of Finance. In addition, any local planning board project findings received by the district or the district architect shall be forwarded to the Division.

6A:26-3.3 Review and approval of school facilities projects

Proposed amendments to N.J.A.C. 6A:26-3.3(e)1 make reference to regulations that define requirements for Abbott districts and are intended to address that when N.J.A.C. 6A:10 is in effect, the rules of N.J.A.C. 6A:24 are suspended.

The Department is proposing amendments to N.J.A.C. 6A:26-3.3(p) to require the Division to notify the district of additional costs as well as excess costs, if any, in its project and preliminary eligible cost determination. In addition, the Department is proposing an amendment that requires that the district evidence its choice of its construction and funding options by district resolution, consistent with current practice.

6A:26-3.5 **Determination of final eligible costs for Authority school facilities projects**

Proposed amendments to N.J.A.C. 6A:26-3.5(d), (e)1.ii, 2.ii, and 3.ii delete the reference to final project approval since Department practice has been a one-step project approval of both non-Authority and Authority projects.

The Department proposes to amend N.J.A.C. 6A:26-3.5(g) to clarify that while the Authority is responsible for cost overruns relating to eligible costs after the final project report is issued, the district is responsible for cost overruns relating to excess costs.

At N.J.A.C. 6A:26-3.5(j), the Department is proposing that it review school facilities projects with excess costs for Abbott district to coordinate the funding of such costs with the districts' request for additional Abbott v. Burke State aid.

6A:26-3.6 **Determination of final eligible costs for non-Authority school facilities projects**

The Department is proposing to amend N.J.A.C. 6A:26-3.6 to include additional costs as among the items about which the Division shall notify the district, following its determination of final eligible costs for non-Authority school facilities projects.

6A:26-3.7 **Local support of school facilities projects**

The Department is proposing to amend N.J.A.C. 6A:26-3.7(c) to delete the limitation of using lease purchase as local share only for non-Authority school facilities projects, so that any school district may be eligible to raise local share through this means.

Proposed amendments to N.J.A.C. 6A:26-3.7(e), N.J.A.C.6A:26-3.7(f) and N.J.A.C.6A:26-3.7(g) would require gifts, grants and other private sources, along with municipal surplus, to be listed in the resolution or question to evidence their portion of the total costs of a school facilities project if a combination of school bonds and other revenues are used to fund the project in a Type I or Type II district. Proposed amendments to N.J.A.C. 6A:26-3.7(e), N.J.A.C.6A:26-3.7(f) would correct typographical errors.

At N.J.A.C. 6A:26-3.7(i), the Department is proposing to codify existing practice, applicable to all districts other than State-operated districts, which have a process established by N.J.S.A. 18A:7A-46.2. The Department is also proposing to substantially elaborate the procedure to be used for districts appealing failed referenda for Commissioner authorization of local share of school facilities projects. The proposed amendments add provisions concerning filing a petition, public comment, and hearing decisions. At N.J.A.C. 6A:26-3.7(i) 6, the Department is proposing to delete language concerning the determination of final eligible costs for school facilities projects in districts with failed referenda.

The Department is proposing a new provision at N.J.A.C. 6A:26-3.7(m) requiring that an Abbott district seeking additional Abbott v. Burke State aid to specifically identify the source of funding for the excess costs of a school project and further providing that the source of funding shall not be State aid or the required local tax levy in order to safeguard the use of these sources for facilities and programs that are necessary for the achievement of the core curriculum content standards.

6A:26-3.8 **Determination of State support for school facilities projects**

Proposed amendments to N.J.A.C. 3.8(a)3i.(2) would require districts to transfer unexpended transferred capital outlay funds remaining after completion of the school facilities project to the general fund whether in the current year or reserved for the subsequent year's general fund budget.

6A:26-3.9 **Design and construction of Authority school facilities projects**

Proposed amendments at N.J.A.C. 6A:26-3.9(c) delete the listing of pre-development activities since such listing is incorporated in the new definition of pre-development activities. At N.J.A.C. 6A:26-3.9(c)1, the Department is proposing to expand the list of activities eligible for predevelopment activities. At N.J.A.C. 6A:26-3.9(c)3, the Department is proposing to require Authority managed districts to initiate their school facilities project by requesting pre-development activity services. The proposed amendments also clarify the process for Abbott districts to submit an application to the Division, which would then make a determination on whether to approve the requested activities.

At N.J.A.C. 6A:26-3.9(h), the Department is proposing to delete a description of the requirements for a district maintenance reserve fund, since the proposed recodification with amendments at N.J.A.C. 6A:26A on comprehensive maintenance plans now address these requirements. The proposed amendments replace a citation to Commissioner rules with the actual citation to the rules at N.J.A.C. 6A:26A. These rules, which have been in existence at N.J.A.C. 6:24, are being recodified as published in the August 4, 2003 New Jersey Register.

6A:26-3.11 **ECPA District Community Early Childhood Education Facilities Projects**

Proposed amendments at N.J.A.C. 6A:26-3.11(a) provide a procedure for an Early Childhood Program Aid (ECPA) district that is also an Abbott district to apply to the Division for approval of the pre-development activities in connection with a community provider project. The proposed procedure is consistent with the community provider rules proposed by the New Jersey Schools Construction Corporation. At N.J.A.C. 6A:26-3.11(a)3, the Department is proposing to establish 90 as the minimum number of preschool students for an eligible community provider project, consistent with the preschool program rules at N.J.A.C. 6A:10-2.2(e)3. At N.J.A.C. 6A:26-3.11(a)4, the Department is proposing to clarify that a community provider project is limited to rehabilitation or an addition to an existing facility owned or operated by the community provider, consistent with the community provider rules proposed by the New Jersey Schools Construction Corporation, and reflective of the policy decision of having districts hold title to new school facilities (whether by acquisition or construction) which may in turn house programs delivered by community providers. At N.J.A.C. 6A:26-3.11(a)10, the Department is proposing to clarify that the district board of education resolution would authorize the submission of the application to the Division.

Proposed amendments at N.J.A.C. 6A:26-3.11(b) encourage but do not require a community provider to meet the educational facility planning standards including those for preschool facilities outside the scope of a community provider project prior to the entity delivering preschool programs to the district. The amendment does not require the meeting of these standards outside of a project

because the inclusion of a community provider project in an ECPA district's long-range facilities plan is only optional, pursuant to N.J.S.A. 18A:7G-5s.

Proposed amendments at N.J.A.C. 6A:26-3.11(d) and (e) amend the community provider project review process by aligning it with the two-step project and cost determination process of school facilities projects although costs are determined differently, on the basis of reasonable estimated costs to complete rather than preliminary eligible costs and final eligible costs.

At N.J.A.C. 6A:26-3.11(f), the Department is proposing a process for petitioning to amend the final project report. This appeal for increased funding of costs is limited to competitively bid projects, consistent with the community provider rules proposed by the New Jersey Schools Construction Corporation at N.J.A.C. 19:36-4.6.

6A:26-3.12 Initiation of other capital projects

The Department is proposing to revise N.J.A.C. 6A:26-3.12(c) to distinguish the process for approving other capital projects between Abbott and non-Abbott districts. The Department is proposing a new requirement for prior budgetary approval before project application submission to the Division and a new requirement for prior approval of an amended LRFP before approval of an other capital project. Additional proposed amendments at N.J.A.C. 6A:26-3.12(c)2, 3, and 4 would require districts to identify in a resolution or question authorizing the funding of an other capital project gifts, grants, and other private sources, along with municipal surplus, but only for information purposes of evidencing their portion of total costs and not for authorizing their use. Without such listing, there may be gaps in the amounts needed to equal the total costs of an other capital project. These proposed amendments mirror those proposed for school facilities project local share at N.J.A.C. 6A:26-3.7. A proposed new provision at N.J.A.C. 6A:26-3.12(c)2 similarly mirrors N.J.A.C. 6A:26-3.7(m) in requiring an Abbott district to identify the source of funding for the other capital project costs and in further specifying that the source of funding shall not be State aid or the required local tax levy. In addition, under this provision an Abbott district would be required to receive prior approval from the Department.

6A:26-3.13 Acquisition of land by districts

The Department is proposing to amend N.J.A.C. 6A:26-3.13(a) to clarify that every acquisition of land, whether by purchase, condemnation, or by gift or grant (if to be used as a school site), must comply with the Department requirements for land acquisition approval at N.J.A.C. 6A:26-7. This requirement is intended to ensure that due diligence is performed on all potential school sites regardless of the manner of acquisition.

At N.J.A.C. 6A:26-3.13(c), the Department is proposing to recodify the provisions in order to group the exceptions to the requirement that approval by the voters or board of school estimate must be obtained. The Department is proposing a new provision at N.J.A.C. 6A:26-3.13(c)3i to require that an approved line-item appropriation for the acquisition of land in the annual budget shall not become part of the pre-budget net budget for purposes of calculating the spending growth limitation of the subsequent year. This provision further states that the unused spending authority created by such appropriation shall not be considered unused spending authority available in the next two subsequent budget years.

6A:26-3.14 Review, approval and use of temporary facilities

This section is proposed to be expanded to include specific instructions for the different types of districts and the approved private schools for the disabled regarding required temporary facilities approval. It establishes the review criteria and, if the temporary facility is housing students, it requires the facility to conform to the temporary facility standards set forth at N.J.A.C. 6A:26-8. The specific submission items required in the application for approval are listed and provide for a one-time review of plans and specifications. Specific proposed additional new section provisions include the following:

N.J.A.C. 6A:26-3.14(b) clarifies how the timing of the submission with respect to the permanent “parent” project, impacts the types of application (either a pre-development application followed by a temporary facility application if for an Abbott district prior to school facilities project submission, or simply a temporary facility application if concurrent with or subsequent to school facilities project submission). This subsection also addresses the applications and determinations for other districts required to use the Authority (clarifying that such districts may apply to have the Authority undertake the pre-development design of temporary facilities that are part of a school facilities project), under 55 percent district aid districts, and approved private schools for the disabled. In addressing Department determinations, it specifies that the school facilities project cost determinations shall include those of the “component” temporary facility, since inclusion in the project costs is a condition for State share funding eligibility.

N.J.A.C. 6A:3.14(c) sets forth the eight application check list items, such as proof of overcrowding, that will be alleviated by the temporary facility.

N.J.A.C. 6A:3.14(d) lists the temporary facility review criteria that the Division will follow, such as conformity of design with educational adequacy and temporary facility standards if intended to house students.

N.J.A.C. 6A:3.14(e) provides that if the temporary facility is to be funded as an other capital project, the district must comply with the Public School Contracts Law at N.J.S.A. 18A:18A-1 et seq. and other applicable laws and regulations including the local support provisions at N.J.A.C. 6A:26-3.12(c).

N.J.A.C. 6A:3.14(f) gives direction to districts and approved private schools for the disabled that have substandard space approved under the rules in effect prior to the effective date of these amendments, clarifying that re-approval is not required under the standards of the new rules for the existing term and that renewal terms are also covered under the rules in effect prior to the effective date of these amendments.

N.J.A.C. 6A:3.14(g) provides for both the duration of Department temporary facility approval and any renewal terms, as well as the conditions for maintaining and renewing the approval, such as inspection by the county superintendent of schools evidencing consistency with UCC requirements for a certificate of occupancy for educational group use.

6A:26-3.15 Demonstration projects

At N.J.A.C. 6A:26-3.15(b), the Department is proposing to delete demonstration project application requirements that are codified in the demonstration project rules promulgated by the New Jersey Schools Construction Corporation at N.J.A.C. 19:33. In lieu of these requirements, the Department is proposing a provision in N.J.A.C. 6A:26-3.15(b)4 that addresses the procedures for Abbott districts requesting pre-development activities for a project that the district intends to be designated a demonstration project. Such activities may include preliminary approval by the Authority of the designation of the project as a demonstration project, as addressed further in N.J.A.C. 19:34-3.1.

N.J.A.C. 6A:26-3.15(f) updates the reference to the maintenance rules to which demonstration projects are subject, in view of the fact that rules have now been promulgated implementing statutory comprehensive maintenance plan requirements, pursuant to N.J.S.A. 18A:7G-9(b)(3).

6A:26-3.16 Emergency stabilization and emergent projects

The Department is proposing to clarify at N.J.A.C. 6A:26-3.16(a) that costs incurred by districts for emergency stabilization are not eligible for reimbursement even if it is determined that an emergent condition exists after undertaking such stabilization. At N.J.A.C. 6A:26-3.16(c), the Department is proposing to require that districts separately account for eligible and ineligible expenditures. The Department is proposing to revise N.J.A.C. 6A:26-3.16(e) to further expedite approval of emergent projects. Specifically, the Department is proposing to allow submission of a board resolution up to 45 days after the submission of a school facilities project application or a predevelopment request in the case of Authority managed projects. Also, if the emergent condition was not part of the district's approved LRFP, the district shall request an amendment to its LRFP as part of the project application and amend its LRFP within 45 days of such submission.

6A:26-3.17 Insurance, damages awards, gifts, grants, other private sources of funds, and municipal surplus

This section addresses how insurance proceeds and other non-EFCFA sources of funds are treated for purposes of determining the local share and State share of school facilities project costs. In particular, the proposed amendments to this section specify that the State share is reduced by the amount of the insurance proceeds and/or damages award received by a district involving the facility for which the district proposes a school facilities project. A new provision at N.J.A.C. 6A:26-3.17(b)3 is also proposed to address Authority constructed school facilities projects without a local share. The Department is proposing to amend this section at N.J.A.C. 6A:26-3.17(c) to also specify how gifts, grants, other private sources of funds, and municipal surplus may be applied to local share and in certain circumstances may result in the adjustment of State share.

SUBCHAPTER 4. MANAGEMENT OF CAPITAL PROJECTS

6A:26-4.2 Use of capital projects fund to account for a capital project funded in part or in whole by school bonds, short term notes, or pre-EFCFA lease purchase agreements of greater than five years duration

At N.J.A.C. 6A:26-4.2(b)4, the Department is proposing a new provision that codifies Department policy permitting districts to shift bond proceeds within an approved referendum as long there is adequate disclosure of such transfers in the referendum question and the district board can attest that all the projects can be completed as approved, and specifically, that no excess costs beyond those approved by voters shall be eligible for such transfers. In the event that the district fails to disclose the ability to transfer on the referendum question, there is an additional provision for transfers upon Commissioner approval. This provision is intended to give districts more funding flexibility with bond proceeds and to acknowledge the practice that districts may be undertaking the projects in a multi-project referendum concurrently, rather than consecutively.

6A:26-4.4 Options where there are insufficient funds to complete a capital project

At N.J.A.C. 6A:26-4.4(a)2, the Department proposes to reorganize and expand on the options that districts have when there are insufficient funds to complete a capital project. These provisions address sources of additional funds, approvals for the sale of additional bonds, and approvals for the transfers of other sources, such as general fund surplus, additional tax levy, and/or capital reserve. This provision reiterates a requirement set forth in N.J.A.C. 6A:26-3.13 that the approved line-item appropriations will not be included in the subsequent year's calculation of a district's spending authority. The proposed rule also establishes the requirement that districts must first seek voter or board of school estimate approval prior to requesting Commissioner approval of surplus transfer if such request is a result of inaccurate and/or deficient cost estimates. In addition, the proposed amendment also clarifies the requirement for voter or board of school estimate approval for changes in scope and for the Division to re-determine the final eligible costs (FEC) when changes in scope or purpose are requested.

6A:26-4.6 Unexpended bond proceeds

At N.J.A.C. 6A:26-4.6(c), the Department proposes to clarify and codify Department policy regarding the trigger point for when unexpended bond proceeds have to be used to reduce outstanding principal or reduce debt service principal payments. The trigger point is at the completion of the school facilities projects and/or other capital projects whose funding was authorized by the bonds, rather than at the completion of one of the projects authorized. This provision is consistent with the Department's proposal at N.J.A.C. 6A:26-4.2 to permit transfers among projects within an approved referendum and is intended to provide districts with further funding flexibility.

6A:26-4.7 Oversight of non-Authority constructed school facilities projects

At N.J.A.C. 6A:26-4.7(a), the Department is proposing to clarify that the oversight rules apply to approved school facilities projects receiving State support.

The proposed amendment at N.J.A.C. 6A:26-4.7(b) reflects the name changes from the Office of the Inspector General to the Office of Government Integrity. Proposed amendments at N.J.A.C. 6A:26-4.7(b)2 would update the citations to the definition of change orders as well as to the provision governing them in this chapter. At N.J.A.C. 6A:26-4.7(b)5, the Department is proposing to tailor oversight documents to the type of State support received, and coordinate document requirements with those required by the Authority State share grants for the final completion disbursement.

6A:26-4.8 Bidding and awarding of contracts for non-Authority capital projects

At N.J.A.C. 6A:26-4.8(a), the Department proposes to clarify when bids may be advertised and when contracts may be awarded. In order to provide districts flexibility and time savings on a project, the Department permits a district to advertise prior to a project receiving final educational adequacy approval, but since such approval may require changes to the project, the Department does not permit the district to award contracts until after such approval. The Department further proposes that if the school facilities project is not subject to either educational adequacy review or UCC review, bids may be advertised and contracts awarded only after final eligible costs have been determined.

6A:26-4.9 Submission of change orders for non-Authority projects

At N.J.A.C. 6A:26-4.9(a), the Department is proposing to delete reference to a superseded rule.

SUBCHAPTER 5. REVIEW OF CAPITAL PROJECTS FOR EDUCATIONAL ADEQUACY

6A:26-5.1 General provisions

At N.J.A.C. 6A:26-5.1(a), the Department is proposing to delete from triggers of educational adequacy review (a)4 which is redundant with the alterations criteria in (a)3, and the barrier free provision of (a)6, which overlaps in part with the alterations criteria in (a)3 and insofar as requiring compliance with the Barrier Free Subcode of the UCC, is now proposed as a new provision in the planning and construction standards at N.J.A.C. 6A:26-6.1(d). At N.J.A.C. 6A:26-5.1(b)1, the Department is clarifying the review process between the Authority (the New Jersey Schools Construction Corporation) and the Department.

6A:26-5.2 **Educational specifications**

The amendments proposed at N.J.A.C. 6A:26-5.2(a) provide that educational specifications give net rather than estimated areas in square feet and also clarify that educational specifications apply to temporary facilities as well as a capital project.

6A:26-5.3 **Schematic plans and other related project documents**

At N.J.A.C. 6A:26-5.3, the Department proposes several amendments to the requirements for schematic plans and other related project documents. N.J.A.C. 6A:26-5.3(a)1 tracks proposed changes to N.J.A.C. 6A:26-5.2 in specifying that the use of space is of the net square feet area. In addition, proposed language would clarify that the net square feet shall be clearly labeled on all existing and proposed spaces to simplify the comparison made during the review of the LRFP and the model. N.J.A.C. 6A:26-5.3(a)5 clarifies the requirements of a plot plan pertaining to physical education fields, playgrounds, and various restrictions on the ownership and or use of the property (deed restrictions, easements, etc.), and further requires that if land is to be acquired, an application for approval under N.J.A.C. 6A:26-7.1 must be submitted. N.J.A.C. 6A:26-5.3(a)6 clarifies the signature requirements for schematic plans, stating that in the case of Authority school facilities projects, the plans should also be signed by the New Jersey Schools Construction Corporation, pursuant to N.J.S.A. 59:4-6. Also, an amendment would refer to New Jersey licensed architect and professional engineer for term consistency in this rulemaking.

At N.J.A.C. 6A:26-5.3(b)3, the Department proposes an amendment that clarifies that a letter indicating project submission is sent to the county superintendent, with a copy to the Division, so that it is understood that the project application itself is not submitted to the county superintendent. At N.J.A.C. 6A:26-5.3(b)4, the Department clarifies both the statutory authorities for the requirement of planning board review and that planning board review is triggered not just by changes to the building footprint, but also, by new buildings and the conversion of an existing building to school use.

6A:26-5.4 **Detailed plans and specifications and final plans and specifications**

At N.J.A.C. 6A:26-5.4(a), the Department proposes an amendment that clarifies that for Authority school facilities projects, final approval of educational adequacy occurs prior to the calculation of final eligible costs since detailed plans are the basis of the Authority cost recommendation. The Department further proposes to amend the requirements of the detailed plans for Authority projects, at N.J.A.C. 6A:26-5.4(a)1 so as to require three individually packaged sets of plans, additional signature by the New Jersey Schools Construction Corporation, and a limitation in the plans it needs to review, so it is clear that the Department does not need to review a full set of construction documents as long as the documents submitted are sufficient to demonstrate conformity with the schematic plans. Also, an amendment would refer to New Jersey licensed architect and professional engineer for term consistency in this rulemaking. Finally, the Department is proposing to delete “unless exempted” to reflect the deletion of exemptions to the fee in an earlier rule adoption.

At N.J.A.C. 6A:26-5.4(b), the Department proposes the same limitation on the plans it needs to review for non-Authority school facilities projects. Proposed amendments also correct the name of the form for a district to request that the municipal code enforcing agency review its plans for conformance with the UCC in lieu of the Department of Community Affairs. In addition, language is proposed to be added to N.J.A.C. 6A:26-5.4 to clarify that the documentation required for the Uniform Construction Code review is different than the documentation required for educational adequacy review. The Department also proposes to delete the requirement that copies of letter of approval from all other State agencies having jurisdiction over the project be provided to the Department prior to the approval of detailed or final plans. The timing of this requirement was not realistic, since letters of approval and permits are sometimes not able to be issued until after UCC review. Also, the Department is proposing a new safeguard of the environmental due diligence performed on a proposed site at N.J.A.C. 6A:26-7.1(b) in the form of a new NJDEP review step. In addition, an amendment would refer to New Jersey licensed architect and professional engineer for term consistency in this rulemaking.

At N.J.A.C. 6A:26-5.4(c), the Department is proposing a new provision to address the one-step educational adequacy review of temporary facilities at the stage of 60 percent or more completion of plans. The application requirements for such review are set forth as follows: proposed (c)1 sets forth the requirements for the documents to be submitted (number, signed and sealed, other signatures, compliance of the design with the temporary facility standards); proposed (c)2 addresses plot plan requirements including the impact that placement of the temporary facility will have on the site of the permanent school facility; proposed (c)3 and 4 address transmittal letters; proposed (c)5 requires a temporary facility schedule; proposed (c)6 addresses an OEEO questionnaire; proposed (c)7 addresses the final educational adequacy review fee; (c)8 addresses the form for requesting municipal code enforcing agency review for UCC compliance, and (c)9 provides different requirements for temporary facilities previously used for school purposes.

6A:26-5.5 **Fee schedule**

At N.J.A.C. 6A:26-5.5(b) and 5.5(c), the Department proposes an amendment that clarifies the timing of calculating the final educational adequacy review fee for other capital projects and school facilities projects subject to final educational adequacy review.

6A:26-5.6 **Capital projects not subject to educational adequacy review**

At N.J.A.C. 6A:26-5.6, the Department proposes a new rule addressing Department requirements for review of capital projects not subject to educational adequacy review. In lieu of schematic plans, the Department requires drawings or narrative sufficient to delineate the scope of work to the Department of Community Affairs or municipal code official, as applicable, for review for conformance with the UCC. Examples of such projects are roof replacements and locker replacements.

SUBCHAPTER 6. PLANNING AND CONSTRUCTION STANDARDS FOR SCHOOL FACILITIES

6A: 26-6.1 Application of the Uniform Construction Code

In addition to the correction and updating of internal citations to rules, the Department proposes to revise N.J.A.C. 6A:26-6.1(b) to clarify that charter schools are required to comply with the Uniform Construction Code enhancements where the health and safety of building occupants are affected and to add a provision at N.J.A.C. 6A:26-6.1(d) to emphasize that among the standards incorporated by reference in this subchapter are those of the Barrier Free Subcode of the UCC.

6A:26-6.2 Exceptions

At N.J.A.C. 6A:26-6.2, the Department proposes a new rule, similar to the UCC rules for variations, that provides the criteria and the process by which the Department would grant an exception from the planning and construction standards in this subchapter. This rule is proposed to provide the necessary flexibility in implementing the Department's planning and construction standards.

6A:26-6.3 Educational Facility Planning Standards

The Department proposes to recodify the educational facility planning standards, update them for conformity with the facilities efficiency standards and the UCC, delete provisions that are redundant with those in the UCC, compliance requirements with wide-ranging environmental law and standards, and add references to preschool facilities, which are specifically addressed in the subsequent section.

Specifically, N.J.A.C 6A:26-6.3(a) proposes to reference the specific standards for school facilities housing preschool students.

N.J.A.C. 6A:26-6.3(b)7 proposes to use "cafetorium" to substitute for multipurpose room to conform with FES spaces; N.J.A.C. 6A:26-6.3(b)8 proposes to clarify that minimum ceiling heights apply to corridors and all other administrative spaces; and N.J.A.C. 6A:26-6.3(b)10 proposes to recodify the requirements for storage of pesticides at N.J.A.C. 6A:26-6.3(e)8 so that they apply throughout the school facility. At N.J.A.C. 6A:26-6.3(b)13 the Department is proposing to add language, to reflect Executive Order 24 (2002), requiring designs of new schools to incorporate the Leadership in Energy and Environmental Design (LEED) guidelines. The LEED Green Building Rating System is a voluntary, consensus-based national standard for developing high performance, sustainable buildings. LEED emphasizes state of the art strategies for sustainable site development, water savings, energy efficiency, materials selection and indoor air quality.

N.J.A.C. 6A:26-6.3(c) is proposed to be amended to accommodate new safety requirements for pick-up and drop-off areas as well as clearly marked walkways and entrances.

At N.J.A.C. 6A:26-6.3(d)1, the Department proposes to exclude gymnasiums, industrial shops, kitchens and locker rooms from the air conditioning requirement and to require compliance with a broad range of environmental standards, clarifying that enforcement of such standards is by the applicable State or Federal agency. A new provision is proposed at N.J.A.C. 6A:26-6.3(d)2 requiring that school facilities be designed, constructed, and renovated consistent with the UCC and other applicable State and Federal law for radon, lead, and other contaminants.

At N.J.A.C. 6A:26-6.3(e), the Department proposes several changes requiring compliance with the playground safety subcode of the UCC. Additional amendments would prohibit playground equipment to be constructed of chromated copper arsenate treated wood, although such prohibition is not yet incorporated in the UCC. Also, the Department is proposing an amendment regarding the requirement of pesticide storage, which now applies throughout the school facility. At N.J.A.C. 6A:26-6.3(f), the Department proposes to clarify the source documents for the district's electricity needs and proposes a new provision that a communication system be installed in each classroom to allow for emergency communication to local authorities. At N.J.A.C. 6A:26-6.3(g), the Department updates the reference to the Division. At N.J.A.C. 6A:26-6.3(h), the Department adds a clarifying reference to the UCC, substitutes preschool for pre-kindergarten in conformity with the preschool program rules, deletes references to early intervention facilities which are funded differently from preschool programs, deletes a provision on exclusive use which is now proposed for the subsequent section, and provides specifics on the drinking water facility, in accordance with the UCC.

6A:26-6.4 **Educational facility planning standards for school facilities housing preschool students**

At N.J.A.C. 6A:26-6.4, the Department proposes a new rule for educational facility planning standards for preschool. Any standards not addressed in this section are addressed in N.J.A.C. 6A:26-6.3, in conjunction with the UCC, and for community providers, the requirements of this section are to supplement but not supplant the Manual of Requirements mandated by the Office of Licensing in the Department of Human Services for community provider licensure, meaning that if the requirements in this section exceed those of the Manual, the requirements of this section shall apply.

At N.J.A.C. 6A:26-6.4(b), the Department proposes general design and construction requirements addressing space, height, minimum square footage, relation of toilet room to instructional room, floor covering, sink access, drinking water facility, and noise modulation design.

The Department proposes to address specific design and construction requirements at 6.4(c) through (g), and tracking the order of such requirements in the previous section, the areas covered are as follows: window standards, outdoor play area (sufficiency of area), use of child safety receptacles, classroom lighting, and toilet facilities (safety, exclusive use, diaper/clothes changing area). At N.J.A.C. 6A:26-6.4(h), the Department is proposing a new provision establishing facilities efficiency standards for early childhood schools. These facilities efficiency standards will expire on the date on which the next Biennial Report becomes effective (July 1, 2005).

6A:26-6.5 **Private Schools for Disabled Students and Schools for Disabled Students Operated by the New Jersey Department of Human Services**

At N.J.A.C. 6A:26-6.5, the Department proposes to recodify the section, add a submission requirement for schematic plans, clarify who signs schematic plans, delete a provision relating to variances since it now proposes an exceptions rule applicable to the entire subchapter, update citations to the rules, and delete the reference to substandard facilities since subchapter eight now addresses temporary facilities, not substandard facilities. In addition, the Department proposes to

divide N.J.A.C. 6A:26-6.5(b)3 into 3i and 3ii to clarify that a State operated facility is overseen by a State agency and private facilities are overseen by municipal officials.

SUBCHAPTER 7. LAND ACQUISITION, SCHOOL CLOSING, AND LAND DISPOSAL

6A:26-7.1 Approval of the acquisition of land

The Department proposes to substantially amend this section, reorganizing requirements according to type and source, updating requirements, adding a NJDEP review step, clarifying the scope of Department review, addressing land acquisitions for other than school sites, and revising school site sufficiency requirements as well.

At N.J.A.C. 6A:26-7.1(a), the Department proposes to use the broader term “acquisition” to replace “purchase,” since land may be acquired in a variety of ways, including by condemnation.

At N.J.A.C. 6A:26-7.1(b), the Department addresses the requirements needed for Department approval for land acquisition, but cautions that the rules are not intended to address requirements of all other State agencies having approval or permitting jurisdiction over the land acquisition. After proposing deletion of what is commonly known as the 15-point checklist, the Department proposes new language, first addressing the information that is generally provided by the district, as follows: written request for approval, map (combining attendance area with location of land and existing schools), racial impact data, appraisal, a new requirement for a title report, a feasibility study, and evidence that a district required to use the Authority has not indemnified the seller. Next, the Department groups the requirements generally satisfied by the licensed architect, engineer or professional planner, which are as follows: whether land is subject to regulations under a number of environmental and land use statutes (Wetlands, Pinelands, Waterfront Development, Green Acres, etc.), whether the land use is consistent with the State Development and Redevelopment Plan, whether land is suitable for proposed use, completed plot plan (which must meet specific requirements not found in the rule to be amended), requirements for acquisition of land with existing buildings or structures, soil conditions documentation, and documentation on soil and groundwater conditions for septic system suitability, if applicable. The Department then proposes requirements of an environmental nature. The first of these relate to water and sewer and additionally address groundwater, if that is the source of water. Then the Department follows with the new requirement intended to enhance the environmental due diligence performed on a proposed site so as to identify earlier any environmental issues on the site. This new requirement entails the completion of an environmental site report by the district or the Authority, as applicable, addressing nine areas, to be submitted to the NJDEP for a 45 day review period. The 45 day review period may be coordinated with the period for planning board review. The topics to be included in the report are: a sewer service consistency determination, potable water supply, coastal and freshwater wetlands, Green Acres land, stream encroachment, historical or archeologic resources, endangered plant species, threatened or endangered animal species, and in addition, the district or the Authority as applicable is to undertake an environmental site assessment to determine if there is potential contamination on the land. The Department anticipates that the cost and timing of the review are such that may be reasonably accommodated by most districts prior to securing local support through referendum. In addition to the NJDEP review, the Department retains the requirement of obtaining prior approvals of other agencies, when such approval is reasonably obtainable prior to acquisition. The final

grouping of information is what is derived from other entities or parties, such as planning board review and recommendations, if any, and recommendation by the county superintendent of schools.

At N.J.A.C. 6A:26-7.1(c), the Department proposes a new rule to clarify that a district acquiring land but not in connection with a school facilities project is excepted from certain of the requirements in (b) above, but will be required to meet those requirements if there is a change of use and the site is intended as a school site.

The Department proposes to recodify the remaining paragraphs of the section. In addition, (e)4 clarifies the outdoor areas required to support the Core Curriculum Content standards, and defines these standards as derived from the FES and the approved programmatic model for the school facility in question; (f) specifies that there are no deed restrictions that prohibit district use of municipally owned land; and (g) clarifies that re-approval is required after the three-year effective period for the initial land approval expires.

6A:26-7.3 **Approval for the acquisition of existing facilities**

The Department proposes to revise the requirements for approval of the acquisition of existing facilities, so that references to off-site, emergency, and substandard are deleted, and new language references the temporary school facilities standards and the educational adequacy requirements for such facilities, if applicable.

6A:26-7.4 **Approval for the disposal of land, including rights or interest therein, or improvements thereon**

At N.J.A.C. 6A:26-7.4, the Department proposes several revisions that bring this provision into closer alignment with the relevant statute pertaining to disposal of land or any rights or interest therein, at N.J.S.A. 18A:20-5 and sale at public sale at N.J.S.A. 18A:20-6. The Department is proposing to include within this provision the approval of the disposal of land with improvements. The Department also proposes a new provision, at N.J.A.C. 6A:26-7.4(a)3, requiring that a request for approval of the disposal shall indicate whether the district intends to convey what it had been conveyed by the Authority or funded in whole or in part of State share under EFCFA. A corresponding change is proposed for N.J.A.C. 6A:26-7.4(c), providing for notification by the Division of the Authority of such disposal. At N.J.A.C. 6A:26-7.4(a) the Department is proposing to revise the language to expand the subsection to apply to any land in a district to make it consistent with new requirements of the LRFP. The Department is proposing to require, at new N.J.A.C. 6A:26-7.4(a)4, evidence that the property has not reverted to the Authority, in the event that the land or rights or interest therein have been conveyed to the district by the Authority. At N.J.A.C. 6A:26-7.4(a)5 the Department is proposing to address when a district seeks to dispose of land, rights or interest therein, and/or improvements thereon funded in part with debt service aid. Finally, the Department is proposing to add a new rule at N.J.A.C. 6A:26-7.4(d) to exempt district conveyance or transference of any trunk or other sewer line from requiring approval from the Division.

6A:26-7.5 **Approval for the closing of a school facility**

The Department is proposing to make several amendments to N.J.A.C. 6A:26-7.5 to provide increased oversight for the closing of a school facility to ensure that needed facilities are not closed.

At N.J.A.C. 6A:26-7.5(a)1, the Department is proposing to require that the district show either that sufficient capacity exists following the proposed closing or that the benefits of undertaking new construction outweigh those of rehabilitating the school proposed for closure. A proposed new N.J.A.C. 6A:26-7.5(b) would require a recommendation from the county superintendent with the request for Division approval for the closing of a school. A proposed new N.J.A.C. 6A:26-7.5(d) would require the Division to notify the district of its determination with respect to the requested school closing, with a copy to the county superintendent.

SUBCHAPTER 8. TEMPORARY SCHOOL FACILITIES

6A:26-8.1 Temporary facilities standards

The Department is proposing to restructure and recharacterize the requirements of this subchapter in several ways. First, because the concept of substandard facility is not a part of the UCC, the Department proposes to recharacterize these facilities as temporary facilities. Second, because the approval process in the existing subchapter is not clearly linked to the approval and funding mechanisms implementing EFCFA, the Department is proposing to set forth such links at N.J.A.C. 6A:26-3.14 and reserve subchapter eight to the provision of the construction and design standards for such facilities, if housing students and therefore, subject to the educational adequacy review proposed at N.J.A.C. 6A:26-5.4(c). The specific amendments proposed are as follows:

The approval process for substandard facilities, at N.J.A.C. 6A:26-8.1(a) is proposed to be deleted. In its place will be a general provision introducing the applications of the temporary facilities standards and the general areas that they cover.

N.J.A.C. 6A:26-8.1(b) proposes amendments to apply the facilities efficiency standards to temporary facilities, and to provide a mechanism for requesting a variance from the facilities efficiency standards.

N.J.A.C. 6A:26-8.1(c) proposes amendments to set forth the monitoring of temporary facilities by county superintendents, and the budgeting of funds to correct deficiencies in the event there is a finding of deficiencies. In addition, the proposed amendments require decisions regarding facility abandonment to be made by the county superintendent in consultation with the Division.

At N.J.A.C. 6A:26-8.1(d), the Department lists the factors that are taken into account in making a determination on the compliance of certain types of temporary facilities with the relevant standards. The first types of facilities addressed are expanded, consolidated, and clarified, so that they include accommodations of students in temporary spaces in an existing public school, in other district-owned facilities or in rented or leased buildings not on a district-owned site. The Department is proposing to delete provisions that are already addressed in the UCC or the FES, proposing to add new provisions to emergency communication and storage of students' clothing, and cross-reference when appropriate the standards for school facilities in general at N.J.A.C. 6A:26-6.3.

N.J.A.C. 6A:26-8.1(d)lix is a new provision that addresses the outside physical education area of students housed in temporary facilities.

At N.J.A.C. 6A:26-8.1(d)2, the Department proposes to delete these provisions in their entirety, since they are now consolidated with the standards applicable to temporary facilities under (d)1.

The Department proposes to recodify the standards pertaining to pre-manufactured temporary classroom units, vans, and other mobile units, so that they are now set forth at N.J.A.C. 6A:26-8.1(d)2. These standards are proposed for amendment so as to cross-reference the new educational adequacy requirement for temporary facilities plans and specifications at N.J.A.C. 6A:26-5.4(c), to meet the revised planning and construction standards for school facilities generally and for those requiring land acquisition, to be situated on land approved by the Division pursuant to N.J.A.C. 6A:26-7.1. Provisions proposed for deletion are those that address approval processes covered elsewhere in the rules, at N.J.A.C. 6A: 26-3.14, or references to Federal law that has since been repealed (The Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, title V, §§551-596, was repealed by Pub. L. 100-297, Title 1, §1003(a), April 28, 1988, and the citation appearing at N.J.A.C. 6A:26-8.1(d) appears to be incorrect). The Department also proposes that pre-manufactured vans or mobile units in service greater than 5 years (rather than prior to June 4, 1986) will be evaluated by the county superintendent of schools in consultation with the Division. The Department is proposing the addition of, in several places in N.J.A.C. 6A:26-8.1(d), references to the UCC and correcting other citations.

SUBCHAPTER 9. CAPITAL RESERVE ACCOUNTS

6A:26-9.1 Capital reserve accounts

At N.J.A.C. 6A:26-9.1, the Department is proposing revisions to clarify the statute of purpose requirements for capital reserve account withdrawals, and to include the requirements for withdrawals associated with pre-development or pre-application costs for school facilities projects. Specifically, at N.J.A.C. 6A:26-9.1(c) the Department proposes new provisions detailing what the statement of purpose in the advertised budget shall include, such as the amount of the deposit, a description of the future capital project and purpose, and a statement about expenditures exceeding the FES.

At N.J.A.C. 6A:26-9.1(e), the Department proposes to provide greater funding flexibility to districts by permitting them to withdraw capital reserve for such pre-development or pre-application costs and also sets forth the option for reimbursement of the general fund from the capital projects fund after approval of the referendum or resolution. At N.J.A.C. 6A:26-9.1(e)4ii, the Department proposes revisions to the statement of purpose to address excess costs.

At N.J.A.C. 6A:26-9.1(g), the Department proposes an amendment to the accounting of unexpended transferred capital reserve funds remaining, and sets forth several options, the return to the capital reserve account, anticipated as part of the general fund balance for the subsequent year's budget or reserved and designated in the second subsequent year's budget for tax relief. Similarly, at N.J.A.C. 6A:26-9.1(h), the Department proposes an amendment that clarifies the accounting treatment of unexpended capital outlay appropriations, requiring restoring of such funds to the capital reserve account for use pursuant to this subchapter.

SUBCHAPTER 10. LEASE PURCHASE AND LEASE AGREEMENTS

6A:26-10.1 Use of lease purchase agreements

At N.J.A.C. 6A:26-10.1, the Department proposes amendments that delete a restriction of lease purchase agreements to non-Authority projects, but in order to protect the investment by the State in the form of State support under EFCFA, the amendments establish the requirement that there are no contingencies to which such funding could be withheld in whole or in part. A new provision, at N.J.A.C. 6A:26-10.1(b) would require that the district in funding the local share or total costs of an Authority constructed project not encumber what has been lease purchased in favor of another party such as the lender or trustee unless that interest is subordinated to that of the Authority. At N.J.A.C. 6A:26-10.1(d), the Department is proposing to cross-reference the description of equipment used earlier in this rulemaking and to include language excluding lease purchase agreements for equipment from the ground lease provisions. Finally, the Department is proposing a new rule at N.J.A.C. 6A:26-10.1(d)3 to require evidence that equipment has been procured in accordance with the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.).

6A:26-10.3 Approval of lease purchase agreements for improvements or additions to school facilities

The Department is proposing to amend N.J.A.C. 6A:26-10.3(e) 4 and 5 to include language excluding lease purchase agreements for equipment from the ground lease provisions.

6A:26-10.9 Approval of lease agreements of facilities to be used for school purposes

The Department is proposing a new section authorizing districts to lease, on a year to year basis, facilities for school purposes. In the case of an emergency, a district may lease for a term not to exceed five years.

6A:26-10.10 Limitation on multiyear leases of facilities

The Department is proposing a new section to require multiyear leases to contain a clause making them subject to the availability and appropriation of sufficient funds or contain an annual cancellation clause.

6A:26-10.11 Public hearing for leases of facilities in excess of five years

The Department is proposing a new section establishing a procedure for public hearings for leases of facilities in excess of five years.

SUBCHAPTER 12. OPERATION AND MAINTENANCE OF FACILITIES

6A:26-12.1 Facilities maintenance requirements

At N.J.A.C. 6A:26-12.1, the Department proposes to amend the provision relating to the comprehensive maintenance plan rules, and delete redundant provisions, now that such rules have been promulgated. In addition, the Department proposes to make amendments to reflect recent adopted changes to the comprehensive maintenance plan regulations at N.J.A.C. 6A:26A, and to replace the term “substandard” with the term “temporary.”

6A:26-12.4 Safe drinking water

At N.J.A.C. 6A:26-12.4, the Department is proposing to correct the citation to the Safe Drinking Water Act.

SUBCHAPTER 14. WITHHOLDING OF STATE SUPPORT FOR NON-COMPLIANCE

6A:26-14.1 Withholding of State support for non-compliance

At N.J.A.C. 6A:26-14.1, the Department is proposing amendments to better coordinate with the Authorities remedies for default under its several grant programs for State share under EFCFA. As proposed, if the Authority refers the matter to the Department in lieu of withholding State support under EFCFA, the Department may upon review of the matter direct the State Treasurer to withhold funds payable by the State from such district. At N.J.A.C. 6A:26-14.1(a)3, the Department proposes a new provision to address withholding of funds in the case of a district for which the Authority constructs the school facilities project.

SUBCHAPTER 17. APPEALS

6A:26-17.1 Appeals of Commissioner's determinations

The Department is proposing to amend the section to reflect the current name of the Division of Finance.

Social Impact

The proposed amendments, recodification, and new rules will apply to all New Jersey public school districts, to community providers, and approved private schools for the disabled.

Students will benefit from this proposal by the State share eligibility of computer systems and other technology equipment in school facilities projects. Local taxpayers will also benefit from State share eligibility of this equipment. Students will benefit from enhanced health and safety requirements for school facilities, and pre-school students will benefit from the new construction and design standards specifically proposed for school facilities housing pre-school programs. Local taxpayers will benefit from State funding of more types of pre-development activities. School districts will benefit from the streamlined process for the approval of temporary facilities. By proposing rules that require districts to identify environmental issues prior to the purchase of land, the health and safety of the users of school facilities, as well as the community in general, will be enhanced, and the State and local taxpayer investment in the land acquisition will be protected. The amendments provide districts increased flexibility in funding pre-development or pre-application costs through capital reserve, and increased availability of lease purchase as a means of obtaining local share.

Economic Impact

The new NJDEP review step required of districts and the Authority prior to obtaining of Department land acquisition approval will impose a new cost on districts prior to obtaining of local share through referendum. At this pre-referendum stage, the cost may vary depending on the number of parcels needed to complete the acquisition. On balance, it is anticipated that the impact of this cost may be offset in part by a decrease in the environmental due diligence that the district would have to undergo after referendum, and this early review may have the additional economic benefit of helping to minimize investment in sites with substantial environmental and other issues. This new Departmental requirement is unlikely to have a significant economic impact on the Authority, since Authority environmental due diligence for Abbott districts is already undertaken extensively prior to acquisition and for such districts without a local share, there are no similar referendum driven timing or cost issues. This proposal is intended to have a positive impact on local taxpayers since it restricts a district's use of line item appropriations to boost the district's spending authority.

Federal Standards Statement

There are no Federal standards or requirements applicable to the proposed amendments and new rules. A federal standards analysis, therefore, is not required.

Jobs Impact

The proposal may result in the generation of jobs for design professionals, for environmental consultants, and in the construction industry.

Agriculture Industry Impact

The proposal will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rules do not impose recording, record keeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments apply predominantly to public schools. The requirements within these proposed amendments and new rules that apply to private schools for the disabled serve to clarify existing requirements and thus do not impose any additional recording, record keeping, or other compliance requirements on private schools for the disabled.

Smart Growth Impact

The proposed amendments relating to land acquisition approval will support the achievement of smart growth and the implementation of the State Development and Redevelopment Plan by requiring submission of information about consistency with the State Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):